IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5881 of 2004

Between:

M/s. Ad Age Out door Advertising Pvt Ltd., rep by Director Mr. Syed Iqbal Mehidi S/o S.Y. Nawab Business O/o Plot No. 246/A, MLA colony, Road No.12, Banjara Hills Hyderabad

..... PETITIONER

AND

1 The Muncipal Corporation of Hyderabad, Hyderabad rep by Officer of Special Duty (CPP) Advertisements Section.
2 The Municipal Corporation of Hyderabad, Hyderabad rep by Commissioner

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of Writ of Mandamus:- i) Declaring the action of the Respondent authorities refusing the petitioner to erect unipoles and advertise as arbitrary, illegal, violative of the articles 14,21 and 300A of the Constitution of India and Consequently direct the Respondents not to interfere with erection of Uni-Poles for advertisements at the applied locations.

Counsel for the Petitioner : MR. M.RAJENDER REDDY

Counsel for the Respondents : MR.RAMA RAO GHANTA

The Court made the following :

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THE HON'BLE MS. JUSTICE G. ROHINI

Writ Petition No.5881 of 2004

ORDER:

The petitioner Firm carries on the business of Out-door advertisements. It is claimed that they have been displaying the advertisements on Uni-Poles as well as on other conventional structures. It is not in dispute that for erecting the hoardings or Uni-Poles, apart from obtaining the no objection from the landlord of the premises where it is proposed to be located, the advertising agency has to obtain the permission of the Municipal Corporation of Hyderabad on payment of the required advertisement fees. It is also necessary for them to produce the N.O.C. from the landlord, Structural Stability Certificate and Site Plan etc.,

It is stated that the petitioner was desirous of erecting hoardings on Uni-Pole structures in 3 different Darga lands of A.P. State Wakf Board and on a request made by the petitioner the A.P. State Wakf Board accepted the proposal and

having agreed to collect ground rent issued N.O.C. for erection of Uni-Poles at 3 different Darga lands. Thereafter, the petitioner made applications dated 02-01-2003, 06-01-2003, 23-01-2003 and 17-04-2003 enclosing the necessary certificates as well as the N.O.C. of the landlord seeking the permission of the respondent-Corporation for erecting the hoardings on Uni-Poles at the above said 3 sites. The petitioner also paid necessary advertisement fees by way of pay orders and cheques. The said application of the petitioner was rejected by order dated 31-03-2003 on the ground that the Tank Bund is under banned Zone where erection of hoardings is not allowed. On receipt of the said order, the petitioner made a representation dated 06-01-2003 requesting the Commissioner to reconsider the issue stating that the Tank Bund was presently hosting several hoardings including the hoardings which were tendered and allotted by M.C.H. However, M.C.H. failed to respond though the Cheques/Demand Drafts enclosed with the applications of the petitioner were uncashed in July, 2003. The petitioner states that in the absence of any specific order rejecting permission and since the advertisement fees paid by them along with their applications was encashed, the petitioner commenced the fabrication of Uni-Pole structures. While so, the Corporation by letter dated 01-08-2003 directed the petitioner to stop the erection work. Since the petitioner has already invested a huge amount of Rs.30 to 40 lakhs they made a representation dated 06-09-2003 requesting the M.C.H. to withdraw the letter dated 01-08-2003 and allow them to proceed with the erection of hoardings on Uni-Pole structures. Since there was no response the petitioner made a further representation dated 15-11-2003 informing the M.C.H. that in the absence of the formal rejection it should be deemed that they are granted the permission and therefore they are entitled to proceed with the work. Then by letter dated 22-11-2003 the M.C.H informed the petitioner that the Corporation is formulating uniform type and design of Uni-Poles and also framing policy guidelines on hoardings which is under consideration and that the request of the petitioner for grant of permission for erection of Uni-Poles at the locations proposed by them will be examined soon after the finalisation of the policy guidelines. The petitioner was also informed that under Section 622(7) of the H.M.C. Act, 1955 mere acceptance of fee for a licence or permission shall not by itself entitle the person paying the fees, to grant of licence or permission and therefore the petitioner shall not proceed with the erection of Uni-Poles until and

unless specific written permission is accorded by M.C.H. They were also informed that if they want to take back the fees already paid towards the advertisement fees they are at liberty to do so by applying for the same.

That apart, the M.C.H. has also put in abeyance the application of the petitioner to relocate a licensed hoarding from Begampet to a Uni-pole hoarding at S.P. Road though the petitioner has complied with all the formalities and made an application in the prescribed form. It is alleged that as a matter of fact the M.C.H. has been allowing the advertising agencies to shift or transfer the hoardings from one location to another and the delay in providing the permission to the petitioner is arbitrary and illegal.

The petitioner also points that having directed the petitioner not to proceed with the erection of the Uni-Poles on the ground that the framing of policy guidelines is still under process, the Corporation has published a tender notice dated 25-02-2004 in local dailies for 3 hoardings on a Uni-pole within the Municipal park premises at Khairatabad flyover circle and 2 conventional hoardings on Tank Bund itself. It is also alleged that the successful bidders in the said tender were allowed to erect and display the Uni-Poles/hoardings by merely accepting the bid amount and the
ad-fees even in the absence of any written permission. It is also stated that the M.C.H. issued another notification dated
18-03-2004 inviting bids for 3 Uni-Poles and 8 conventional hoardings in which the display of hoardings on Tank Bund was allowed. The petitioner alleges that as a matter of fact the M.C.H. authority have been allowing various agencies to erect hoardings on Uni-Poles in the Twin Cities of Hyderabad and that several Uni-Poles have been erected by various advertising agencies and the action of the M.C.H. in denying permission to the petitioner is arbitrary and illegal.

Hence this Writ Petition seeking a declaration that the action of the respondents in not permitting the petitioner to erect Uni-Poles as arbitrary and illegal and in violation of Articles 14 and 21 of the Constitution of India.

On behalf of the Municipal Corporation of Hyderabad the Additional Commissioner (Advertisements) filed a counter affidavit stating that since the erection of Uni-Poles is a new concept, the respondent Corporation has examined pros and consequences and the safety and public interest aspects and accordingly formulated a policy and the same is placed before the standing committee and the standing committee is examining the said policy in all aspects. Once the said policy is approved by the standing committee, the same will be the guiding factor for the purpose of regulating erection of Uni-Poles and advertisement therein. It is stated that pending consideration of the policy, the respondent corporation has utilized two places for erecting the Uni-Poles in and nearby public places. The respondent corporation has issued an advertisement for erecting the Uni-Poles at two specific places and permitted the selected agencies to erect the Uni-Poles keeping in mind the guidelines for examining the practical aspects which will be a guiding factor for the future course of action.

So far as the payments made by the petitioner, it is stated that since the petitioner made the payment for various hoardings and advertisement including 3 advertisements, the payment which is in excess was adjusted towards the arrears payable by the petitioner and as such the said amount was not returned. In fact, the petitioner is liable to pay huge amount even after adjusting the said amount to the corporation towards the permission fee for displaying various advertisements within the twin cities. It is also stated that though some Uni-Poles were erected in some non-prohibitory areas by various companies including the petitioner company, no specific permission was granted by the Municipal Corporation of Hyderabad since formation of the policy is pending before the Standing Committee.

I have heard the learned Counsel for the petitioner, the learned Standing Counsel appearing for the respondent Corporation and perused the material on record.

As can be seen, the only grievance of the petitioner appears to be that the

respondent Corporation is not justified in not granting the permission for erection of Uni-poles in the twin cities. The contention of the petitioner is that since the petitioner and other similarly situated agencies have been displaying the advertisements on the Uni-poles for the past two to three years and they have also been paying the necessary advertisement fee and particularly since the Corporation has invited tenders for erection of Uni-poles at identified places, the action of the respondent Corporation in not allowing the petitioner to carry on the similar activity is arbitrary, illegal and discriminatory being in violation of Article14 of the Constitution of India.

I am unable to agree with the said contention of the petitioner in view of the specific plea taken by the respondent Corporation that the erection of Uni-poles itself is a new concept and the Corporation is still in the process of examining the *pros and cons* and particularly the aspects relating to safety and public interest. The Corporation states that it has already formulated a policy and the same has been placed before the Standing Committee which is yet to be approved. The Corporation also states that as soon as the policy is approved by the Standing Committee, the applications from all the agencies will be considered as per the guidelines. It is neither permissible nor possible for this court to go into question whether the display of advertisements on conventional hoardings and the display on Uni-poles stand on the same footing. It is for the Competent Authority to take a decision and admittedly the Corporation having considered the said issue has already formulated the guidelines and the same is being scrutinised by the Standing Committee. I also do not find any substance in the contention of the petitioner that the Corporation having invited tenders for erection of Uni-poles cannot deny similar benefit to the petitioner since the Corporation states that the tenders were invited only for erection of the Uni-poles at two specific places on experimental basis for examining the practical aspects to decide about the future course of action. The mere fact that the petitioner and some other similarly situated agencies have already erected the Uni-poles, which was evidently without obtaining the prior permission of the Corporation, does not confer any legal right on the petitioner to seek a Writ of Mandamus compelling the respondent Corporation to grant the permission for

erection of new Uni-poles and for continuation of Uni-poles already erected.

For the abovesaid reasons, I do not find any substance in the contentions raised by the petitioner and accordingly the Writ Petition is disposed of leaving it open to the Corporation to consider the request of the petitioner as soon as the Standing Committee takes a decision with regard to the guidelines formulated by the Corporation. No costs.

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8th April, 2005.

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To

1. The Officer of Special Duty (CPP), Advertisements Section., Muniipal Corporation of Hyderabad.

2. The Commissioner, Municipal Corporation of Hyderabad, Hyderabad.

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